

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

ANGEL CHAVEZ,

Petitioner,

v.

Nos. CV 21-1195 MV/GJF
CR 20-413 MV/GJF

UNITED STATES OF AMERICA,

Respondent.

**ORDER VACATING PROPOSED FINDINGS AND RECOMMENDED DISPOSITION
AND SETTING EVIDENTIARY HEARING**

THIS MATTER is before the Court *sua sponte*. On August 30, 2022, this Court filed its Proposed Findings and Recommended Disposition (PFRD). ECF 10. The PFRD reasoned that Petitioner had failed to submit any affidavit (including his own) or other evidence that would entitle him to an evidentiary hearing and ultimately recommended that his motion be denied with prejudice. *Id.*, *passim*. On October 3, 2022, Petitioner timely objected to the PFRD, spending the bulk of his 37 pages taking issue with this Court's conclusion that no evidentiary hearing was warranted. ECF 13, *passim*. Curiously, the United States did not respond to Petitioner's objections, thereby foregoing its opportunity to educate the presiding judge about its view of the merits *vel non* of the PFRD and Petitioner's objections thereto.

The presiding judge has not acted on the PFRD or the objections. Nonetheless, having re-reviewed Petitioner's objections, and in an abundance of caution, the Court will vacate its PFRD and order an evidentiary hearing limited to two questions: (1) whether Petitioner timely communicated to his counsel or his counsel's office his desire to appeal the sentence imposed, and (2) whether defense counsel had an affirmative, post-sentencing obligation to consult with Petitioner concerning his appellate options, including the advantages and disadvantages of filing

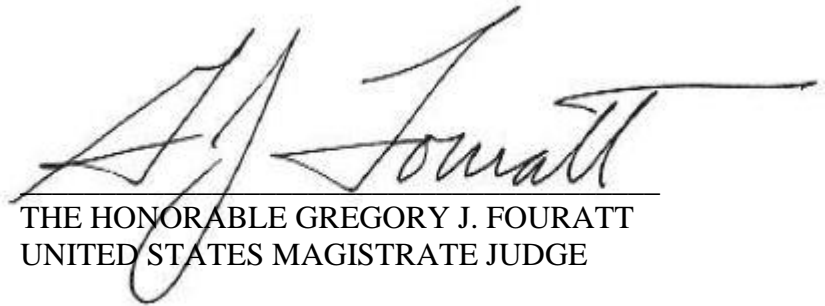
an appeal. As Petitioner bears the burden of production and persuasion, he will commence the presentation of evidence with his case-in-chief, to be followed by the United States' case-in-chief and any rebuttal by Petitioner.

IT IS THEREFORE ORDERED that the PFRD is **VACATED**.

IT IS FURTHER ORDERED that the parties shall appear before me for an evidentiary hearing on **January 13, 2023, at 10:00 a.m.** in a to-be-determined courtroom at the Pete V. Domenici United States Courthouse, 333 Lomas Boulevard, Albuquerque, New Mexico. The United States Marshals Service is directed to ensure Petitioner's in-person appearance at this hearing.

IT IS FINALLY ORDERED that **no later than 5:00 p.m. on January 9, 2023**, the parties shall each file witness and exhibit lists, exchange copies of their respective exhibits, and send copies of their exhibits to the undersigned at fourattproposedtext@nmd.uscourts.gov.

SO ORDERED.



THE HONORABLE GREGORY J. FOURATT
UNITED STATES MAGISTRATE JUDGE